

PT 98-64
Tax Type: PROPERTY TAX
Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

JOLIET REGIONAL PORT DISTRICT)		
Applicant)		
)	Docket #	93-99-225
v.)		
)	Parcel Index #s	See attached
THE DEPARTMENT OF REVENUE)		
OF THE STATE OF ILLINOIS)		

RECOMMENDATION FOR DISPOSITION

Appearances: Mr. Raymond E. Meader appeared on behalf of the Joliet Regional Port District.

Synopsis:

The hearing in this matter was held on April 7, 1997, at the James R. Thompson Center, 100 West Randolph Street, Chicago, Illinois, to determine whether or not the Will County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter qualified for exemption from real estate taxation for the 1993 assessment year.

Mr. Ronald M. Hudson, a project engineer for Hanson Engineers, was present and testified on behalf of the Joliet Regional Port District (hereinafter referred to as the "Port District").

The issues in this matter include, first, whether the Port District is a port district as defined by statute; and secondly, whether the Port District owned these parcels during all or part of the 1993 assessment year, for real estate taxation purposes. Following the submission of all of the evidence and a review of the record, it is determined that the Port District is a port district

within the purview of the statutes. It is also determined that the Port District owned these parcels for real estate taxation purposes during the period March 29, 1993, through December 31, 1993.

It is therefore recommended that the Will County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter qualify for exemption for 76% of the 1993 assessment year.

Findings of Fact:

1. The jurisdiction and position of the Illinois Department of Revenue (hereinafter referred to as the “Department”) in this matter, namely that these parcels did not qualify for exemption for the 1993 assessment year was established by the admission in evidence of Department’s Exhibit Nos. 1 through 5A.

2. On January 31, 1994, the Will County Board of Review transmitted to the Department an Application for Property Tax Exemption To Board of Review concerning the parcels here in issue for the 1993 assessment year. (Dept. Ex. No. 1)

3. On August 4, 1994, the Department advised the Port District that it was denying the exemption of these parcels because said parcels were not in exempt use and the deed restrictions did not pass sufficient ownership for exemption purposes. (Dept. Ex. No. 2)

4. By a letter dated August 19, 1994, one of the Port District’s attorneys requested a formal hearing in this matter. (Dept. Ex. No. 3)

5. The hearing in this matter, conducted on April 7, 1997, was held pursuant to that request.

6. The Port District acquired the parcels here in issue by a quit claim deed from Lewis University (hereinafter referred to as the “University”) dated March 29, 1993. (Dept. Ex. No.1B, Appl. Ex. No. 3)

7. The Port District is organized pursuant to the Joliet Regional Port District Act, 70 ILCS 1825/1 et seq. (Tr. pp. 9 & 10)

8. The Port District acquired the University's existing airport from the University by a quit claim deed dated April 11, 1989. The parcels here in issue were acquired by the Port District from the University so that the Port District may proceed with its plan to expand the existing airport. (Tr. pp. 13-15)

9. The University is a private co-educational university under the sponsorship of the Christian Brothers. The main campus of the University is adjacent to this airport in Romeoville, Illinois. The University offers flight training, aircraft service classes, and utilizes a portion of the airport for aviation educational purposes. (Tr. pp. 15 & 16)

10. The record in this case includes a Memorandum from George Tinkham, assistant chief counsel of the Illinois Department of Transportation, to Roger Barcus, chief engineer of the Division of Aeronautics, stating that Lewis University Airport is owned and operated by the Joliet Regional Port District, a political subdivision of the State of Illinois. Mr. Tinkham found that the Port District owned a sufficient interest in the real estate of the airport to cause the airport to be eligible for federal and State of Illinois airport development grants. On a sheet attached to this Memorandum is a list of engineering projects at the airport funded by State of Illinois grants. This list of grants includes grants concerning the parcels here in issue. (Tr. pp. 16-18 and Applicant's Ex. No. 7)

11. The deed concerning the parcels here in issue includes the reservation of easements for access to the taxiways and runways of the airport. The purpose for reserving these easements was to assure the University that it would continue to have access to the runways and taxiways of the airport for the University's aviation educational programs as the runways and taxiways were developed by the Port District. These easements were also included in the original deed to the existing airport from the University to the Port District in 1989. These easements do not in any way adversely affect the operation of the airport or the Port District. (Tr. pp. 23 & 24)

12. The deed also includes a restriction that the airport be developed as a general aviation and reliever type of airport and not a hub airport. This restriction was not inconsistent with the Port District's intent to develop this airport as a general aviation and reliever type

airport. This restriction also appeared in the original deed of the existing airport from the University to the Port District in 1989. (Tr. p. 27)

13. The utility easements reserved by the University in the deed here in issue concern utility easements crossing this property to other buildings owned by the University. These utility easements are not in any way inconsistent with the expansion of the airport. (Tr. pp. 38 & 39)

14. Finally, in the deed there was a reservation for 180 days of an easement so that the University could use St. Joseph's Road for ingress and egress of construction equipment from Wilco Boulevard to the Harold E. White Aviation Center located on the University property adjacent to the airport. This was necessary since the bid documents with the construction contractors who were building the aviation center specified the use of St. Joseph's Road for ingress and egress of construction equipment. (Tr. pp. 41 & 42)

15. I take Administrative Notice of the Department's decision in Docket No. 89-99-22 in which the Department determined that the original operating airport property conveyed to the Port District by the University, which contained in the deed essentially the same covenants, easements, and restrictions as the covenants, easements, and restrictions in the deed in this matter, qualified for exemption from property taxation.

Conclusions of Law:

Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The Supreme Court long ago determined that the question of whether property is exempt from taxation depends upon the constitutional and statutory provision in force at the time for which the exemption is claimed. The People v. Salvation Army, 305 Ill. 545 (1922).

During the 1993 assessment year, 35 **ILCS** 205/19.19 exempted port districts as follows:

All property of every kind belonging to the Chicago Regional Port District or any other port district created by the legislature of this State.

During 1993, 70 **ILCS** 1825/3.1 exempted the property of the Joliet Regional Port District in the following language:

All property of every kind belonging to the Port District shall be exempt from taxation,

Based on the foregoing, it is clear that the real estate owned by the Port District meets the requirement for exemption.

Article IX, Section 6, of the Illinois Constitution of 1970, sets forth what types of property the General Assembly may exempt. During 1993, 35 **ILCS** 205/19.1 through 205/19.20 contained the exemptions from real estate tax authorized by the General Assembly, pursuant to the constitutional authorization set forth in Article IX, Section 6. These exemptions are basically of three types: exemptions requiring the ownership of property by a particular type of organization, exemptions requiring the use of property for a particular purpose, and exemptions requiring both the ownership of property by a particular type of organization and the use of said property for a particular purpose. Both Section 205/19.5, concerning property owned by the State of Illinois, and Section 205/19.19, concerning property owned by the Chicago Regional Port District and other port districts, require only that the State or the Port District own the property in issue. Consequently, cases defining the term “ownership” for the purposes of Section 205/19.5 are relevant concerning the definition of “ownership”, concerning Section 205/19.19.

In the case of Southern Illinois University Foundation v. Booker, 98 Ill.App.3d 1062 (5th Dist. 1981), the Court held that the elements of ownership for real estate tax purposes are control of the property and the right to its benefits. There is no question in this case but that the Port District, as a result of the deed dated March 29, 1993, had substantial control over the use of the parcels here in issue during the period March 29, 1993, through December 31, 1993, and the

right to use the benefits of those parcels. In People ex rel. Olmsted v. The University of Illinois, 328 Ill. 377 (1927), the Court held that ownership by the State, which is sufficient to exempt property from taxation, must be exclusive and free of any legal or equitable interest in anyone else. That clearly is the case here.

In addition, I have taken Administrative Notice of the Department's decision in Docket No. 89-99-22, in which the Department determined that the original operating airport property conveyed by the University to the Port District, which contained in the deed essentially the same covenants, easements, and restrictions as the covenants, easements, and restrictions in the deed in this matter, qualified for exemption from property taxation.

I therefore conclude that the Joliet Regional Port District, which is a port district created by statute, owned the parcels here in issue for real estate taxation purposes during the period March 29, 1993 through December 31, 1993.

I consequently recommend that the Will County Parcel Index Nos. listed on the sheet attached to the Notice of Decision in this matter should be exempt from real estate taxation for 76% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge
August 19, 1998